

The Transparency in Classification Act

Introduced by Senators Chris Murphy and Ron Wyden

The Executive Branch may only classify information when the “unauthorized disclosure of the information reasonably could be expected to result in damage to the national security” and this potential damage outweighs the public interest.¹² Recognizing the potential for abuse, there are strict limits on the authority of the Executive Branch to classify:

“Information shall not be classified in order to conceal inefficiency, violations of law, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay release of information that does not require protection in the interest of national security.”³

Despite these limits, congressional oversight of the classification system is weak, and there are limited recourses for the Courts, Congress and the American Public to challenge classification decisions. Recent events demonstrate that national security information may have been classified in order to prevent embarrassment, rather than protect the national security interest of the United States:

- January 2020 War Powers Resolution Notification following the assassination of Iranian General Qasem Soleimani;
- An Office of the Director of National Intelligence (ODNI) report on the murder of Washington Post reporter Jamal Khashoggi by Saudi Arabia;
- The pre-publication review of former National Security Advisor John Bolton’s memoir *The Room Where it Happened*;
- Meetings and associated documents related to the COVID-19 pandemic;
- Supplemental materials from the 2020 impeachment testimony of Jennifer Williams relating to Vice President Pence’s September 18, 2019 call with Ukrainian President Volodymyr Zelensky, and
- The Trump Administration’s selective disclosure of information on foreign election interference from the National Intelligence Estimates.

The *Transparency Classification Act* (TICA) will address the lack transparency and integrity in the classification system, prevent and address abuse of the classification system for political purposes, and protect the public’s right to know by:

1. Establishing a statutory appeal body for classification decisions modeled off the existing Interagency Security Classification Appeals Panel (ISCAP) located within the National Archives, authorizes funding for ISCAP, and affirms Congress' role within the body.

¹ 28 CFR § 17.22 (a)(3); Section 1.1 of Executive Order 13526 (2009)

² Section 3.1 of Executive Order 13526 (2009)

³ 28 CFR § 17.22 (d); Section 1.7 of Executive Order 13526 (2009)

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2. Establishing a mechanism within ISCAP for rapid Congressional review of classification decision to be used during pressing policy debates.
3. Establishing incontrovertible protections for employees that informally question or formally challenge classification decisions.
4. Requiring that War Powers Resolutions Notifications must be submitted primarily in unclassified form.

Overclassification, whether accidental or intentional, imperils both the public's trust in government and the government's national security. TICA will improve both and address the Trump administration's repeated abuse of the classification system for political gain

In addition to this legislation, Senator Murphy has [requested](#) the National Archives' [Information Security Oversight Office](#) and [Public Interest Declassification Board](#) investigate these documents and practices; [appealed](#) the War Powers Resolution Notification, which was [rejected](#) on specious grounds; and [raised the alarm](#) on [election interference](#).

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